

THE FINANCIAL SERVICES ROUNDTABLE

Financing America's Economy



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June 7, 2011

Mr. David A. Stawick
Secretary of the Commission
Commodity Future Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

<http://www.regulations.gov>

Re: RIN 3038-AD48. Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps

Dear Mr Stawick:

The Financial Services Roundtable ("Roundtable")¹ respectfully submits these comments in response to the Commodity Future Trading Commission's (CFTC) notice of proposed rulemaking on Swap Data Recordkeeping and Reporting Requirements for Pre-Enactment and Transition Swaps to implement Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").

Differentiation of Swaps

The Roundtable appreciates the differentiation of pre-enactment and transition, and future swaps, though we ask the CFTC to recognize the challenges associated with gathering data on pre-enactment swaps. Within the proposed rulemaking the CFTC has recognized a number of these concerns, but we do not believe that it has adequately responded. Given the current volume of swap agreements and numerous recordkeeping records, institutions will spend numerous hours identifying and compiling this data so that it is meaningful to the CFTC.

Furthermore, while our members have made their best efforts to comply with each of the pre-enactment and transition swap interim-final rules, they do not necessarily have all of the minimum primary economic terms for pre-enactment swaps required by this rule proposal. For instance, it will be difficult to identify the settlement agent of the reporting and non-reporting counterparties for pre-enactment currency swaps. This is especially true where a financial institution has inherited a pre-enactment swap by way of an acquisition or merger.

¹ The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for \$74.7 trillion in managed assets, \$1.1 trillion in revenue, and 2.3 million jobs.

Therefore, we request the CFTC to further consider the reasoning for collecting historical swap data, as these swaps will terminate prior to the compliance date. We encourage the CFTC to focus primarily on the records created after the compliance date. This would allow for institutions to provide the necessary diligence to creating the reports. In the alternative, we request the CFTC to create a safe harbor from the recordkeeping requirements for institutions that have complied with the previously issued interim-final rules by preserving all information on file, yet do not have full records for pre-enactment swaps.

Inter-affiliate Swaps

We believe that there are special considerations with respect to inter-affiliate swaps in the context of the reporting requirements that should be considered. Corporate groups often use one or more designated entities to enter into third-party swaps to hedge their risks. These designated entities then enter into back-to-back swaps with the affiliate that hedges the risk. In the case of swaps between affiliates, reporting does not appear to add any value in terms of increasing transparency and would have the effect of increasing costs and administrative burdens on corporate groups.

Additionally, the reporting of these swaps could be distortive to the data in the swap data repositories that would be used to calculate block trade sizes and for other purposes. During the development of the Dodd-Frank Act Senator Blanche Lincoln noted “it would be appropriate for regulators to exempt from mandatory clearing and trading inter-affiliate swap transactions which are wholly owned affiliates of a financial entity.”² A number of her colleagues provided similar statements. In addition, the staff of the CFTC has noted that commonly-owned and controlled entities were considered to be a single entity for purposes of compliance with CFTC regulations,³ this letter also stated the physical transaction and the hedging transaction would be viewed as one and the separation between the commonly-owned legal entities is disregarded.

We believe that the CFTC should continue to limit the regulatory requirements it imposes on internal transactions between affiliates of a parent company.

Confidentiality of Data

The Freedom of Information Act will apply to swap data and swap data reports that are submitted to the CFTC as required by the proposed rule. This information will include confidential, proprietary commercial or financial information relating to both the reporting counterparty and its counterparty. The disclosure of that information will expose both counterparties to the risks of serious harm to their commercial or financial interests, and to competitive harm. For example, careful study of a counterparty’s historical swap data may allow competitors or other third parties to discern the counterparty’s hedging strategy – which could render the successful execution of the strategy more costly or even impossible. Commercial and financial firms seeking to protect their balance sheets could instead find themselves exploited by other traders.

To avoid these potential outcomes, the final rule should expressly designate swap data and swap data reports as trade secrets and confidential commercial or financial information, and as information contained in examination or operating reports prepared for the CFTC’s use. The final rule should include express treatment of swap data and swap data reports as confidential supervisory information.

² 156 Cong. Rec. S5921, July 15, 2010

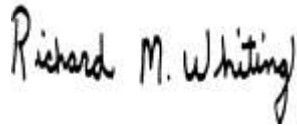
³ CFTC Letter Interpretation, Re: Request for Confirmation of Interpretations Regarding “Bona Fide Hedging” and “Exchanges of Futures for Product” (available May 9, 1994).

We appreciate the efforts of the CFTC to coordinate all compliance dates for swap reporting. Given the intense technical changes that will be required within institutions to create these reports, we encourage the CFTC to allow for a phased implementation timeline based on a participant's sophistication, resources and swap trading volume. This will allow for adequate time and also would comply with the legislation, which allows for the CFTC to announce an effective date later than 90 days after the effective date of CEA Section 2(h)(5).

In closing, the Roundtable encourages the CFTC to consider differentiating between pre-enactment and transition swaps and post-enactment swap requirements, recognize the uniqueness of inter-affiliate swaps, and increase the confidentiality controls of data

Thank you again for the opportunity to share our views with you on this subject. If you have any questions, please feel free to contact me at 202-589-2413 or Rich@fsround.org, or William Henley the Senior Vice President of Regulation at BITS⁴ at 202-589-2402 or William@fsround.org.

Sincerely,

A handwritten signature in black ink that reads "Richard M. Whiting". The signature is written in a cursive, slightly slanted style.

Richard Whiting
Executive Director and General Counsel

⁴ BITS is the technology policy division of the Roundtable. BITS fosters the growth and development of electronic financial services and e-commerce for the benefit of financial institutions and their customers.